Filed 7/27/10 P. v. Rodriguez CA6

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. GABRIEL ANTHONY RODRIGUEZ, Defendant and Appellant.	H034675 (Santa Clara County Super. Ct. No. CC931721)

After his motion to suppress evidence (Pen. Code, § 1538.5)[1] was denied, defendant Gabriel Anthony Rodriguez entered into a negotiated plea agreement whereby he pleaded guilty to possession of less than one ounce of marijuana (Health & Saf. Code, § 11357, subd. (b); a misdemeanor), possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)), and being under the influence of methamphetamine (Health & Saf. Code, § 11550, subd. (a); a misdemeanor). The trial court suspended imposition of sentence and placed defendant on probation for two years with various terms and conditions, including that he enter and complete a Proposition 36 drug treatment

[1] Further unspecified statutory references are to the Penal Code.

program. Defendant filed a notice of appeal challenging the trial court's denial of his motion to suppress. (§ 1538.5, subd. (m).)[2]

On appeal, defendant contests the validity of the detention and search of his person by a police officer on January 15, 2009. He argues that he was detained without reasonable suspicion in violation of the Fourth and Fourteenth Amendments to the United States Constitution. As we find that defendant's initial encounter with the officer was consensual and not a detention within the meaning of the Fourth Amendment, we will affirm the judgment.

BACKGROUND

Defendant was charged by information filed April 9, 2009, with possession for sale of marijuana (Health & Saf. Code, § 11359; count 1), possession for sale of methamphetamine (Health & Saf. Code, § 11378; count 2), and being under the influence of methamphetamine (Health & Saf. Code, § 11550, subd. (a), a misdemeanor; count 3). On May 8, 2009, he filed a motion to suppress all evidence relating to a search conducted on January 15, 2009, contending that the search was the result of an unlawful detention. The People filed opposition to the motion on May 20, 2009, contending that the search was a result of a consensual encounter, not a detention. The testimony at the June 23, 2009 hearing on the motion was as follows.

Around 11:56 p.m. on January 15, 2009, San Jose Police Officer Frank Hagg was on routine patrol in the area of Longview and Pompano Streets in a marked patrol car. Officer Hagg saw several cars legally parked on the side of the road. When he

[2] Section 1538.5, subdivision (m) provides in relevant part: "A defendant may seek further review of the validity of a search or seizure on appeal from a conviction in a criminal case notwithstanding the fact that the judgment of conviction is predicated upon a plea of guilty. Review on appeal may be obtained by the defendant provided that at some stage of the proceedings prior to conviction he or she has moved for the return of property or the suppression of the evidence."

illuminated them with the patrol car's spotlight, he could see that there were two people in a parked car two to three car lengths ahead of him. He stopped his patrol car approximately one car length behind and to the left of the occupied car, not blocking its path. He did not intend to detain the car, he just wanted to see who was inside it "and what they were up to." Although there were cars parked in front and in back of the occupied car, the car would have been able to pull out and leave.

Officer Hagg did not activate his overhead lights, but he kept the spotlight on the occupied car. He got out of the patrol car and "casually approached" the driver's side of the occupied car while carrying his flashlight. When the officer was near the rear bumper of the car, defendant, the driver of the car, rolled down his window. The officer had not directed defendant to roll down his window. When the officer was near the rear tire of the car, he detected a strong odor of fresh marijuana coming from inside the car. This led the officer to believe that the car's occupants were in possession of marijuana. While the officer was about one foot behind the rolled down window, the officer saw defendant move his hands near his waistband. This caused the officer to believe that defendant was concealing either a weapon or contraband. The officer contacted defendant and asked him to exit the car. Defendant stepped out of the car and the officer conducted a pat search for weapons.

Following submission of the matter, the court denied defendant's motion to suppress, stating: "All Right. So, even though Officer Hagg did use a spotlight in this case, that did not in itself create a detention. The case law is clear on that point. [¶] The evidence that was presented showed that the officer did not activate his emergency lights. He did not issue any orders to the defendant during his initial contact. His approach toward the defendant's vehicle was casual. And he did not block the defendant's car. And the defendant's car was free to leave the area where it was parked. [¶] Accordingly, the court finds that this initial contact was, in fact, consensual. The detention occurred at a later point, and it was lawful at that later point."

Although Officer Hagg was not questioned about it at the hearing on the motion to suppress, he testified at the preliminary examination that defendant was "sweating profusely," he had fluttering eyelids and dilated pupils, he had a very dry, chapped mouth, and he kept licking his lips. Based on the officer's training and experience, he believed that defendant was under the influence of methamphetamine. During a search of defendant at the police station, the officer found a small plastic sandwich baggie containing marijuana and methamphetamine.[3]

On July 14, 2009, defendant entered into a negotiated disposition whereby the prosecutor amended the information to allege possession of less than an ounce of marijuana (Health & Saf. Code, § 11357, subd. (b); a misdemeanor) in count 1, and simple possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)) in count 2; count 3 remained as charged; and defendant pleaded guilty to all the charges in the amended information with the understanding that he would be placed on probation for two years and be eligible for a drug treatment program under Proposition 36. On August 6, 2009, the court suspended imposition of sentence and placed defendant on probation for two years with various terms and conditions, including that he enter and complete a Proposition 36 drug treatment program.

DISCUSSION

Defendant contends that he was unlawfully detained when Officer Hagg blocked his avenue of escape when the officer admittedly lacked reasonable suspicion of criminal activity. "The 'totality of the circumstances' in this case did not lead to a 'particularized and objective basis for suspecting [defendant] of criminal activity.' " "The officer's combined acts of blocking off traffic with his patrol car while focusing his spotlight on

[3] Defendant did not ask the court to consider, and the court did not consider, the transcript of the preliminary examination for purposes of the motion to suppress. We include the information here in order to show a factual basis for defendant's pleas.

[defendant] from a distance of one car length away signaled a detention at the outset." "Combining these facts, with the officer's decision to get out of his car, instead of waiting for further developments, and then rapidly positioning himself at [defendant's] window with a flashlight, removes any doubt that this was an unjustified assertion of authority which [defendant] could not decline. The trial court's decision to deny [defendant's] suppression motion must be reversed."

The People argue that defendant was not detained when Officer Hagg approached his car. "The officer did no more than shine his spotlight on [defendant's] car, stop his vehicle in a place that did not interfere with [defendant's] egress, and walk toward the parked car. Viewed singly or collectively, these acts did not implicate the Fourth Amendment."

"The standard of appellate review of a trial court's ruling on a motion to suppress is well established. We defer to the trial court's factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment." (*People v. Glaser* (1995) 11 Cal.4th 354, 362, citing *People v. Leyba* (1981) 29 Cal.3d 591; *People v. Lawler* (1973) 9 Cal.3d 156, 160.)

"Police contacts with individuals may be placed into three broad categories ranging from the least to the most intrusive: consensual encounters that result in no restraint of liberty whatsoever; detentions, which are seizures of an individual that are strictly limited in duration, scope, and purpose; and formal arrests or comparable restraints on an individual's liberty. [Citations.] Our present inquiry concerns the distinction between consensual encounters and detentions. Consensual encounters do not trigger Fourth Amendment scrutiny. [Citation.] Unlike detentions, they require no articulable suspicion that the person has committed or is about to commit a crime. [Citation.]

"The United States Supreme Court has made it clear that a detention does not occur when a police officer merely approaches an individual on the street and asks a few questions. [Citation.] As long as a reasonable person would feel free to disregard the police and go about his or her business, the encounter is consensual and no reasonable suspicion is required on the part of the officer. Only when the officer, by means of physical force or show of authority, in some manner restrains the individual's liberty, does a seizure occur. [Citations.] '[I]n order to determine whether a particular encounter constitutes a seizure, a court must consider all the circumstances surrounding the encounter to determine whether the police conduct would have communicated to a reasonable person that the person was not free to decline the officers' requests or otherwise terminate the encounter.' [Citation.] This test assesses the coercive effect of police conduct as a whole, rather than emphasizing particular details of that conduct in isolation. [Citation.]" (*In re Manuel G.* (1997) 16 Cal.4th 805, 821 (*Manuel G.*).)

"The officer's uncommunicated state of mind and the individual citizen's subjective belief are irrelevant in assessing whether a seizure triggering Fourth Amendment scrutiny has occurred. [Citation.]" (*Manuel G.*, *supra*, 16 Cal.4th at p. 821.) "The test is 'not whether the citizen perceived that he was being ordered to restrict his movement, but whether the officer's words and actions would have conveyed that to a reasonable person.' [Citation.]" (*People v. Garry* (2007) 156 Cal.App.4th 1100, 1106.) "[C]ases . . . place great significance on how the officers physically approached their subjects. [Citations.] Furthermore, while cases have not found the use of a spotlight alone to constitute a detention [citations], they also indicate its use should be considered in determining whether there was a show of authority sufficient to establish one occurred. [Citations.]" (*Id.* at pp. 1110-1111.)

In this case, Officer Hagg's testimony indicates he shined his spotlight on defendant's car, parked his patrol car one car length behind and to the left of the car, did nothing to prevent the car from leaving, had no other officers with him, did not use his

emergency lights, did not draw a weapon, and made no verbal commands or requests as he "casually approached" defendant's car while carrying his flashlight. We believe that under all the circumstances surrounding the encounter, Officer Hagg's actions did not constitute a show of authority so intimidating as to communicate to any reasonable person that he or she was " 'not free to . . . terminate the encounter.' " (*Manuel G.*, *supra*, 16 Cal.4th at p. 821.) Defendant rolled down his window before the officer reached it or requested defendant to do so, communicating that he consented to the encounter. Up to that point, the consensual encounter did not trigger Fourth Amendment scrutiny. (*Ibid*.) At that point, however, the officer detected the smell of fresh marijuana coming from defendant's car, which gave the officer reasonable suspicion to detain defendant. Therefore, contrary to defendant's contention, he was not detained without reasonable suspicion in violation of the Fourth Amendment.

Defendant contends that because Officer Hagg parked his patrol car to impede the flow of traffic on the street, continued to shine his spotlight on defendant's car, got out of the patrol car with a flashlight in his hand, and approached the driver's side door of defendant's car, the officer's actions constituted a detention. "Unlike a person who is approached by police when they are sitting in a park, or on a public curb, reasonable citizens expect that an officer approaching the driver's side window of their car, after blocking off the street and focusing a bright light (of any color) upon them, will be seeking official contact. Whether intentional or not, the officer succeeded in creating a scene which closely resembled a traffic investigation. Any citizen would have felt obligated to roll down the window and cooperate with police under the circumstances present in this case."

While most citizens will consent to a police encounter, the fact that people do so, and do so without being told they are free to terminate the encounter, does not eliminate the consensual nature of the encounter. (See *United States v. Drayton* (2002) 536 U.S. 194, 205 (*Drayton*).) And, as we stated above, the use of a spotlight alone does not turn a

consensual encounter into a detention. (*People v. Perez* (1989) 211 Cal.App.3d 1492, 1496.) "While the use of high beams and spotlights might cause a reasonable person to feel himself the object of official scrutiny, such directed scrutiny does not amount to a detention. [Citations.]" (*Ibid.*) Nor does parking a patrol car in a traffic lane, without more, lead to a conclusion that a detention has occurred. In *People v. Jones* (1991) 228 Cal.App.3d 519, cited by defendant, the officer pulled his patrol car to the wrong side of the road, parked diagonally against the traffic, and directed the defendant, who was walking away, to stop. The appellate court found that the officer's conduct, taken as a whole, constituted a detention. (*Id*. at pp. 522-523.) "A reasonable man does not believe he is free to leave when directed to stop by a police officer who has arrived suddenly and parked his car in such a way as to obstruct traffic." (*Id*. at p. 523.)

In this case, after considering all the circumstances surrounding the encounter with defendant, we do not believe that the effect of Officer Hagg's conduct as a whole, including the use of the spotlight and the parking of the patrol car in the traffic lane, was coercive. (*Manual G*., *supra,* 16 Cal.4th at p. 821.) Officer Hagg shined his spotlight on defendant's car, parked his patrol car on the right side of the road behind and to the left of defendant's car, exited the patrol car, and approached defendant's car while carrying a flashlight but without saying anything. "There was no application of force, no intimidating movement, no overwhelming show of force, no brandishing of weapons, no blocking of exits, no threat, no command, not even an authoritative tone of voice." (*Drayton*, *supra*, 536 U.S. at p. 204.) As the *Drayton* Court stated, it is "beyond question" that on-the-street police encounters such as the one in this case are constitutional. (*Ibid*.) Therefore, the trial court did not err in denying defendant's motion to suppress evidence.

DISPOSITION

The judgment is affirmed.

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BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

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MIHARA, J.

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MCADAMS, J.